

7

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Constitutional Provisions and Ordinances	2
Question Presented	3
Statement	3
Argument	3
The First Amendment Right of Assembly is conditional and not absolute.	3
The Cincinnati Ordinance meets the test of Constitutionality.	4
The terms of the Cincinnati Ordinance are precise.	4
Conclusion	6

TABLE OF AUTHORITIES

Statutes:

United States Constitution	
First Amendment	2, 3, 4
United States Constitution	
Fourteenth Amendment	2, 4

Cases Cited:

<i>Cox v. Louisiana</i> , 379 U.S. 536 (1965)	4
<i>Gregory v. Chicago</i> , 394 U.S. 111 (1969)	4
<i>United States v. Petrillo</i> , 332 U.S. 1 (1947)	4

Other References:

Cincinnati, Ohio Ordinance, Section 901-L6	3
Webster's Third New International Dictionary of The English Language Unabridged	5

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**Dennis Coates, et al.,
Appellants**

VS.

City of Cincinnati
Appellee

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ate July 22, 1970

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July 22, 1970

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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 1370

DENNIS COATES, et al.,
Appellants,
vs.
CITY OF CINCINNATI,
Appellee.

Appeal From The Supreme Court of Ohio

BRIEF OF APPELLEE

OPINION BELOW

The opinion of the Supreme Court of Ohio is reported in 21 Ohio St. 2d 66 (Appendix, page 7).

JURISDICTION

This is an appeal from the final judgment of the Supreme Court of the State of Ohio entered January 28, 1970, affirming the decision of the Court of Appeals for the First Appellate District of Ohio on February 4, 1969, which affirmed the judgment of the Hamilton County Municipal Court rendered on March 29, 1968. Probable Jurisdiction was noted on May 18, 1970.

CONSTITUTIONAL PROVISIONS AND ORDINANCE

UNITED STATES CONSTITUTION AMENDMENTS

AMENDMENT I

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Sections 2, 3, 4 and 5 omitted).

CINCINNATI CODE OF ORDINANCES

Section 901-L6 Loitering at Street Corners.

It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars (\$50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both.

QUESTION PRESENTED

Whether Cincinnati Code of Ordinances Section 901-L6, prohibiting three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings, violates the First and Fourteenth Amendments to the Constitution of the United States?

STATEMENT

There is no bill of exceptions. Appellants bring this appeal solely from the provisions of Cincinnati Code of Ordinances Section 901-L6.

ARGUMENT

The First Amendment Right Of Assembly Is Conditional And Not Absolute

Appellants contend the First and Fourteenth Amendments to the Constitution of the United States guarantee their right of assembly and prohibit government from enacting any law respecting citizen assembly.

Your Appellee does not agree.

The First Amendment to the Constitution, made applicable to the several states of the nation through the Fourteenth Amendment, in part, provides:

"Congress shall make no law . . . abridging . . . the right of the people *peaceably to assemble*, and to petition the Government for a redress of grievances."
(emphasis supplied).

The First Amendment does not provide an absolute right of assembly. The right of assembly is conditional. The

condition is that the people assemble and conduct themselves *peaceably*. The proposition presented is not new to the court. In *Cox v. Louisiana*, 379 U.S. 536 (1965) this court emphatically rejected the notion that the First and Fourteenth Amendments afford the same kind of freedom respecting conduct as these amendments afford to speech. The court reaffirmed this position in *Gregory v. Chicago*, 394 U.S. 111 (1969) saying the Federal Constitution does not bar enactment of laws regulating conduct, if such laws specifically bar only the conduct deemed obnoxious and are carefully and narrowly aimed at that forbidden conduct.

The Cincinnati Ordinance Meets The Test Of Constitutionality

We humbly suggest the Cincinnati Ordinance challenged by appellants meets the test of constitutionality. The gravamen of appellants complaint concerns the use of the term "annoying" to describe the *conduct* prohibited by the ordinance. Appellants suggest the term is vague and imprecise. We urge that the term "annoying" is not vague, imprecise, nor a term which requires reasonable men of common intelligence and understanding to guess at its meaning. There are some men who will never understand that which meets their purpose not to understand. The Constitution does not require impossible standards of legal draftsmanship. What is required is that laws be drafted so men of common intelligence, who would be law-abiding, can determine with reasonable precision what acts it is their duty to avoid. *United States v. Petrillo*, 332 U.S. 1 (1947).

The Terms Of The Cincinnati Ordinance Are Precise

The Cincinnati Ordinance is drafted with reasonable precision when examined against the First Amendment

provisions which grant the right of the people to peaceably assemble. The choice and use of the term annoying in the Cincinnati Ordinance was no mistake. Annoying is the antonym of peaceably. Peaceably is defined by Webster's Third New International Dictionary of the English Language Unabridged (1964) at page 1660 to mean "without subjection to annoyance". Respectfully we suggest to the court that if peaceably is a term of common understanding to describe First Amendment conduct which is protected against legislative limitation and peaceably means without subjection to annoyance; then the opposite of peaceably is annoying, a term equally capable of common understanding to described that conduct which is prohibited and unprotected by the provisions of the First Amendment.

When this cause was before the Supreme Court of Ohio, that court, in its written opinion, (Appendix, page 10) said:

"The word 'annoying' is a widely used and well understood word; it is not necessary to guess its meaning. 'Annoying' is the present participle of the transitive verb 'annoy' which means to trouble, to vex, to impede, to incommode, to provoke, to harass or to irritate."

We conclude that the common and wide usage of the term annoying; its definition in commonly accepted and used dictionaries of the English language leads no man astray when determining what conduct is prohibited.

Just as those who drafted the First Amendment used the term "peaceably" to describe that conduct which is protected at public assemblies; those who drafted the Cincinnati Ordinance carefully selected the term "annoying" to describe that conduct which is the opposite of peaceably and not protected by the United States Constitution.

CONCLUSION

We respectfully submit, in conclusion, that Section 901-L6 of the Cincinnati Code of Ordinances, should be upheld and held to be constitutional, and the findings of guilty of the appellants herein be sustained, and that the convictions be affirmed.

Respectfully submitted,

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